

Kenneth Covell
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Attorney for Plaintiffs

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT FAIRBANKS**

ROBERT PROBERT; LORETTA E.
PROBERT; GENE GRISSOM;
SANDRA GRISSOM; JOHN GRIMES;
DONNA GRIMES; KENNETH
MCDANIELS; LEONA MCDANIELS;
ERIC CLONINGER and DEBRA
CLONINGER,

Plaintiffs,

vs.

FAMILY CENTERED SERVICES of
ALASKA, INC.; JOHN W. REGITANO;
KATHY CANNONE; SUSZAN DALE;
LONNIE HOVDE; DEBORAH L.
COXON, and ADDITIONAL DOES I to
X, Managerial Employers, Jointly Liable,

Defendants.

Case No. 4:07-CV-00030 RRB

**DECLARATION OF KENNETH L. COVELL IN SUPPORT OF
OPPOSITION TO MOTION TO DISMISS**

1) I am Counsel in the above captioned matter.

2) I received the Court's Order on November 9, 2011 saying an Opposition was

due by November 23, 2011.

- 3) I filed a Petition for Writ of Certiorari in this case in the United States Supreme Court on November 16, 2011.
- 4) Up through November 9, 2011, I had been preparing for a murder case to start November 14, 2011 and the Petition to be filed on November 16, 2011.
- 5) The murder case was fortunately continued on November 9, 2011 to December 5, 2011 however I have been in the throes of attempting to continue to prepare for that matter as well as deal with many other pressing business issues including the Petition for Certiorari.
- 6) I was not able to return my attention to this Opposition to Motion to Dismiss until November 20, 2011. I prepared a draft Opposition which I had time to review on November 21, 2011 and now have met with the Proberts late in the day on November 22, 2011. It is now 5:00 p.m. on November 22, 2011.
- 7) I have not had adequate time to prepare an Opposition to the Motion to Dismiss, even to the extent of completing adequate legal briefing.
- 8) There are numerous factual issues of material fact in this case will arise as to what the contract might be between the Proberts and the other Plaintiffs and FCSA and what the terms thereof may be and whether or not those terms were violated.

- 9) The Affidavits of the Proberts clearly indicate that even if they had agreed to work certain amounts of time for a fixed amount of money they were worked in addition to that.
- 10) The Proberts are owed, at a minimum, hourly wages for the time worked in excess of the amount of time they agreed to.
- 11) The Proberts and other Plaintiffs in this case all complained to FCSA about being worked more hours than they had agreed too.
- 12) I believe FCSA's employment contracts with all the house parents and particularly part-time house parents including Loretta Probert are unconscionable.
- 13) Loretta Probert worked for an effective rate of \$3.13/hour, less than half of the state and/or federal minimum wage. She was given little or no relief, worked 96 hours a week for weeks on end. Such a contract shocks the conscious and this Court ought to find it unenforceable.
- 14) I currently have a murder trial set for December 5, 2011 which I expect to take two weeks. Substantial briefing needs to be completed in that case prior to the start date concerning evidentiary issues in that case. These are very complicated legal issues which will take significant time and effort to complete. Further there is substantial fact development to be done in the

case. I expect there will be approximately 20 to 30 witnesses in the case.

- 15) There is an issue in this case as to whether the Complaint states the cause of action under the FLSA, under either the theory under 29 U.S.C. §203(r) and/or 29 U.S.C. §203(s). Frankly I think it states the claim under the FLSA and the question of applicability act may only have been litigated under §203(r) but not §203(s). Divining and ascertaining whether or not that is true is a significant legal writing project in and of itself. I have not had adequate time to contemplate research or write in that regard.
- 16) Even if Plaintiffs Proberts are precluded from pursuing a claim under the FLSA without specifically stating there is coverage under §203(r) or under §203(s), the interest of justice would require the Court afford an opportunity to amend the Complaint to include claims under an alternate coverage theory. Whether or not pending decisions in this case might or might not control such questions, again is a lengthy and involved legal matter which I have not had time to contemplate or pursue.
- 17) There are numerous, complicated factual and legal issues here and there is wholly and inadequate amount of time to be spent addressing them in Opposition to Motion to Defendants' kitchen sink Motion to Dismiss at Docket 196.

Declaration

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on November 23, 2011.

s/ Kenneth L. Covell

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing has been served electronically by ECF to the following attorney(s) and/or parties of the record:

John Foster Wallace

Richard D. Monkman

Dated: November 23, 2011

By: s/ Camille De Santiago
Law Office of Kenneth L. Covell